STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission,	)	
	)	
on its own motion,	)	
	)	ICC Docket No. 01-0609
Investigation of the propriety of the rates, terms,	)	
and conditions related to the provision of the	)	
Basic COPTS Port and the COPTS-Coin Line Port.	)	

INTERVENORS' INITIAL BRIEF
IN OPPOSITION TO SBC'S PETITION

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Payphone Services, Inc., together
Referred to as the CLECs

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TruComm, LLC, Data Net Systems, LLC and Payphone Services ("CLEC Intervenor's"), by the attorney's and pursuant to and pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("ICC") and the Administrative Law Judge's Order, respectfully files this Initial Brief.

This issues presented to the Commission in this case, while narrow, will establish fundamental principles about the conditions by which Ameritech can attempt to recover from competitive local exchange carriers (CLECs) costs that are already included in Ameritech's rates for unbundled network elements, and whether Ameritech extort money from CLECs as a price of gaining entry to compete against Ameritech. There is no question that Ameritech is required by Section 13-801 of the Illinois Public Utilities Act to provide CLECs with access to all software features and functionalities of the switches that it uses for its own operations. Yet, despite this basic tenet, Ameritech attempts to deny CLECs access to features that Ameritech uses in its switches to providing Flexible ANI access services to its own PSP customers, unless CLECs pay rates beyond that already approved by the Commission to recover the cost of providing CLECs access to the features of the switch. The Commission should deny Ameritech's request to charge

a rate of $3.24 per line per month to CLECs, and instead order Ameritech to provide a UNE-P access line to CLECs that is capable of transmitting Flex ANI identifiers at the rate of $2.18 per line per month, the same rate as the basic port. (See Currie Schedule KAC-1S, Am. Ex. 2.1.)

Ameritech has not produced sufficient evidence to carry its burden of proof that the additional rate element that it wants to impose on the CLEC Intervenors is permissible under Section 13-801, Section 251 of the federal Communications Act, or the Commission's prior orders. 220 ILCS5/13-801; 47 U.S.C. § 251.

As noted in *Louisiana II*[1], the seminal case cited by Ameritech, local exchange carriers are:

> legally obligated to provide all vertical features "that the switch is capable of providing." Vertical features provide end-users with various services such as custom calling, call waiting, three-way calling, caller ID, and Centrex. According to BellSouth's interpretation of this rule, it is only legally obligated to make available vertical features that it currently offers to its retail customers. We disagree.
>
> Our rules require BellSouth to provide all vertical features loaded in the software of the switch, whether or not BellSouth offers it on a retail basis.

Louisiana II, ¶ 216-17. Ameritech has not complied with this requirement.

STATEMENT OF FACTS

On September 10, 2001, Illinois Bell Telephone Company ("Ameritech") filed its Tariff Advice No. 7530 with the Illinois Commerce Commission ("Commission") which purportedly introduced a new unbundled network element service that Ameritech described as unbundled local switching with basic coin operated pay telephone services (COPTS) line port. On September 11, 2001, Data Net Systems, LLC, TruComm Corporation, and Payphone Services, Inc. filed petition requesting that the Commission initiate this investigation to determine the just

[1] *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region InterLATA Services in Louisiana*, CC Dkt. 98-121, 13 FCC Rcd. 20, ¶ 217 (Oct. 13, 1998) ("*Louisiana II*")

and reasonable rate for the line port, and to set an interim rate pursuant to Section 13-801(g) of the Illinois Public Utilities Act, 220 ILCS 5/13-801(g).

The network element at issue here is a basic line port, combined with unbundled local switching (ULS). The basic line port is the same basic line port that Ameritech makes available to CLECs to use in providing telecommunications services to end users, and is the same basic line port that Ameritech uses to provide telephone service to its own retail customers. Ameritech has designated the basic line port as a "Basic COPTs Port" and the "COPTs-Coin Line Port," and has proposed a tariffed rate for the COPTS Port different than the rate for a basic UNE port. According to Ameritech, this additional rate is necessary to recover "right to use" licensing fees paid by Ameritech to Lucent to make Flexible Automatic Number Identification, or Flex ANI, available to CLECs that intend to provide services to payphone service providers. At the time this case was initiated, the TELRIC-based rate for a basic UNE port was $5.01, and Ameritech's tariff proposed to add an additional $2.19 for the Flex-ANI feature. However, as a result of the Commission's July 10, 2002 Order in Docket No. 00-0700[2], the TELRIC-based rate for a basic UNE port was set at $2.18. After the Commission issued its order in 00-0700 , Ameritech revised its testimony in this proceeding to reduce add $1.07 (instead of $2.19) to the basic line port with Flex ANI capability. (Currie Schedule KAC-1S, Ameritech Ex. 1.2.)

Flex ANI is a software feature embedded in all switches that, when enabled, allows a local exchange carrier ("LEC") to insert an additional set of pre-defined digits into the automatic number identification ("ANI") stream accompanying each call, thereby instructing the network of unique routing or rating instructions associated with the call. (Starkey, CLEC Ex. 1.0 at 4.) FLEX-ANI is not specifically used for pay telephone services, but instead, can be used for any

[2] *In re the Commission's Investigation into Tariff Providing Unbundled Local Switching with Shared Transport,* ICC Dkt. No. 00-0700, Order, July 10, 2002 (hereinafter "00-0700 Order.")

number of current, or future, network services that require special rating or routing instructions. (*Id.*) When used in support of network services made available to pay telephone providers, FLEX-ANI generates a pre-defined, two-digit identifier ("70") that allows an inter-exchange carrier ("IXC") to identify a call as originating from a pay telephone. (Id.) Section 276 of the federal Communications Act, 47 U.S.C. § 276, requires IXCs to compensate pay telephone providers for toll free and access code calls[3] originated from a pay telephone. FLEX-ANI services are required so that all interested parties can accurately identify pay telephone calls for proper compensation. FLEX-ANI is a service provided by the local exchange carrier ("LEC") to the pay telephone provider. According to the FCC,

> FLEX ANI, which is a switch software feature, enables the transmission of a number of additional coding digits with a call that can, *inter alia*, uniquely identify a call as coming from a payphone. FLEX ANI codes are generated in end office databases and FLEX ANI is more flexible and easily modified to add additional coding digits than conventional ANI ii. When FLEX ANI codes are available, they are outpulsed with the call, instead of the embedded hardcoded ANI ii digits. FLEX ANI enables the assignment of more two digit codes (potentially 00-99) for payphones in addition to the "27" code already provided by ANI ii, including "29" for prison/inmate payphones and "70" for "smart" payphones. FLEX ANI is deemed flexible because new codes can be added to each end office database with the installation of new switch software. FLEX ANI is not available on non-equal access switches, but is resident on many equal access switches where it must be activated ("turned on") as a software capability. FLEX ANI requires a one time switch implementation per end office and associated trunk translations for each IXC, which ensure that the payphone-specific code will transfer thereafter with all calls from payphones. The major costs involved in implementing FLEX ANI are the initial generic software upgrades if necessary, activating the software, and provisioning end office trunks to provide the service to each IXC. Using FLEX ANI, IXCs can identify the call as a payphone call for call tracking, pay per-call compensation for the call, bill for the call based on the information provided with the call, and block the completion of the call if requested by the customer.[4]

[3] For example, if an end user makes a collect call from a payphone dialing "1-800-CALLATT", or uses a prepaid calling card from a pay telephone, the IXC that carries that call must compensate the payphone provider for the use of the payphone providers' facilities in originating the call. AT&T and other IXC's rely upon Flex ANI to identify which calls are made from payphones, and to determine which calls they carry require compensation to the payphone provider.

[4] *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96-128, *Memorandum Opinion and Order*, DA 98-491, ¶ 20 (Rel. March 9, 1998).

In the March 9, 1999 *Memorandum Opinion and Order*, the FCC authorized Ameritech "to recover from PSPs [Ameritech's] incremental costs of providing payphone-specific coding digits [Flex ANI] for purposes of enabling PSP calls to be identified by IXCs to pay compensation for each and every completed intrastate and interstate telephone call made using a payphone that is not otherwise compensated." *Id.* ¶ 40. Notably, the FCC's *Memorandum Opinion and Order* held that:

> [t]he major costs involved in implementing FLEX ANI are the initial generic software upgrades if necessary, activating the software. . ..

Id., ¶ 20. When Ameritech was required to provide Flex ANI on access lines made available directly to Payphone Service Providers (PSPs), it purchased software licenses from Lucent for two Secure Feature ID: SFID 38 and SFID 142. Tr. 106; PC Cross Ex. 3. Pursuant to FCC order, Ameritech filed a tariff that assessed a rate of $1.21 per month per access line to all Payphone Service Providers ("PSPs") operating in Illinois, including its own payphone operations, for the period from June 1998 through June 2000. (Starkey Direct, PC Ex. 1.0, p. 6-7.)

Notably, prior to March 31, 1998, the Illinois Commerce Commission had already ordered Ameritech to provide the "Unbundled Network Elements Platform" ("UNE-P") under Section 13-505.5 of the Illinois Public Utilities Act, as well as under Section 251(c)(3) of the federal Communications Act. 220 ILCS 5/13-505.5; 47 U.S.C. § 251(c)(3). In *In re Petition of LDDS Communications, Inc. v. Illinois Bell Telephone Company*, ICC Dkt. No. 95-0531, Order, June 26, 1996, the ICC held that these statutory requirements require "any and all network elements . . . be made available, in any combination, so that a new entrant can provide service, and that necessarily includes the provision of those elements on a 'total network' or platform

basis. *Id.*, p. 72. The ICC's Order compelled Ameritech (and Centel) to provide as part of the UNE-P offering all "the features, functions, and capabilities of the" switch purchased as part of the UNE-P offering. *Id.*, p. 73. The UNE-P offering included not only the switching facilities, but also transport elements that would route calls between central offices and delivering those calls with routing information to interexchange carriers.

On September 23, 1998, the ICC ordered Ameritech to implement UNE-P with shared transport that relied upon Advanced Intelligent Network ("AIN") triggers to provide UNE-P and shared transport. According to the order approving the Ameritech-SBC merger, the AIN approach in providing shared transport allows Ameritech to bill CLECs for usage sensitive charges for using shared transport facilities.[5] According to the Commission's decision requiring Ameritech to provide AIN-based shared transport the "cost and time to deploy such capability is significant and substantial." *Id.*, Condition 28, page 250. Ameritech was ordered to make AIN-based shared transport offering available in Illinois at the rates then in effect in Texas. *Id.* Notwithstanding the Commission order, Ameritech failed to comply with the Merger Order in ICC Docket No. 98-0555 to set UNE-P rates with AIN-based shared transport at the Texas rates.[6] The Commission even went so far as to indicate that Ameritech's efforts to make ULS to CLECs was "disingenuous." There, the Commission held "Ameritech has not, under any reasonable interpretation, complied with our prior orders requiring it to provide" cost-based UNE-P services available to CLECs with the AIN-based shared transport. *Id.*

The actual costs that Ameritech believed to be incurred in providing AIN-based shared transport, as a network element made available to CLECs in a UNE-P offering was to be

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[5] *In the matter of the Joint Application for approval of the reorganization of Illinois Bell Telephone Company d/b/a Ameritech Illinois*, ICC Dkt. No. 98-0555, Order, Sept. 23, 1999 ("*Ameritech/SBC Merger Order*".)

[6] *In the matter of Investigation into the compliance of Illinois Bell Telephone Company with the order in Docket No. 96-0486/0596*, ICC Docket No. 98-0396, Order, October 16, 2001, p. 65.

established pursuant to the Commission's investigation in ICC Dkt. No. 98-0396. The rate for UNE-P ports with shared transport was then deferred to ICC Docket No. 00-0700.[7] Finally, in ICC Docket No. 00-0700, the Commission investigated the actual costs incurred by Ameritech in making UNE-P services available to CLECs with AIN-based shared transport. This investigation arose out of the October 2000 tariff filed by Ameritech to allegedly comply with the *Ameritech/SBC Merger Order*. In ICC Docket No. 00-0700, the Commission held that a rate of $2.18 would fully recover Ameritech's cost of providing UNE-P services, with AIN-based shared transport.

In late March 2001, Payphone Service, Inc. requested that Ameritech provide unbundled network elements in combinations necessary to provide access services to pay telephone service providers. On March 21, 2001, Data Net Service also requested that Ameritech provide unbundled network elements platform in combinations necessary to provide access services to pay telephone service providers. (P.C. Cross Ex. 12.) Ameritech responded to both of these requests indicating that it would not provide services unless each CLEC paid Ameritech for the software upgrades to provide Flex ANI. Ameritech demanded that both Payphone Services and Data Net Systems make these payments even though Ameritech represented to the FCC that its $1.21 rate for 24 months would recover all costs associated with "the initial generic software upgrades . . . activating the software" to provide FLEX ANI.

Ameritech claims that additional software features were necessary for its Lucent 5ESS switches, due to a defect in the way that Ameritech provided shared transport as part of the UNE-P offering. According to Ameritech, because of the interaction between switch software and the Advanced Intelligent Network ("AIN") software that SBC Illinois uses to provide shared transport, the AIN software stripped off the FLEX ANI digits that would normally identify a call

[7] ICC Docket No. 98-0398

as originating from a payphone. Ameritech Br. p. 4. This occurred because the AIN "triggers" that support SBC Illinois' UNE-P offering did not correctly recognize the Flex ANI digits that identify payphone calls. *Id.*

To solve its problem, Ameritech claims that it purchased 2 software features developed by Lucent to address the problems relating to providing Flex ANI with UNE-P. The two software features were already resident in the Lucent 5ESS switches, but the licenses had not been purchased by Ameritech. The two software features are Secure Feature Identification Number 332 ("SFID 332") and Secure Feature Identification Number 528 ("SFID 528.")

However, notwithstanding Ameritech's claims that these two software features were purchased to provide UNE-P with AIN-triggered shared transport, it is clear that both of these software features were made available by Lucent prior to Ameritech's provision of UNE-P for payphone access lines. Tr. 130. Indeed, documents produced by Ameritech make clear that the SFID 332 and SFID 528 were provided by Lucent, and purchased by Ameritech, to correct problems that Ameritech was having in tracking calls that originated from pay telephones, and these SFID features were implemented by Ameritech to comply with their obligations to provide Flex ANI on calls made from payphones. Tr. 102; Payphone Coalition Cross Exh. 8, 9, 10. In fact, Ameritech's brief makes the bold statement that "SBC purchased the secure features exclusively to support the Unbundled Payphone Ports." Ameritech B. p. 4-5. This statement is directly contrary to the evidence, as it is clear that Ameritech identified that it had to purchase SFID 332 and SFID 528 to correct defects in the way it was handling calls made from payphones, prior to Data Net or Payphone Services ordering the UNE-P with Flex ANI services.

Ameritech's request to attribute 100% of the costs of the licenses for SFID 332 and SFID 528 to CLECs purchasing UNE-P with Flex-ANI capable ports must be rejected by the Commission. The facts make clear that the costs incurred by Ameritech, if any:

1. Are already recovered through the existing Port rates;
2. Are not directly attributable to UNE-P services;
3. Are not recurring charges for which a recurring monthly rate is appropriate;
4. Have not been allocated across the entirety of Ameritech's network architecture; or
5. Should have been recovered by Ameritech when it filed its federal tariffs in 1998 to recover the cost of Flex ANI.

ARGUMENT

I. SINCE AT LEAST FEBRUARY 1996, AMERITECH HAS BEEN AWARE THAT IT WAS REQUIRED TO PROVIDE SHARED TRANSPORT, AND ANY COSTS INCURRED BY AMERITECH FOR SHARED TRANSPORT ARE ALREADY PART OF THE TELRIC BASED RATE OF $2.18.

The issue in this proceeding is whether Ameritech may impose a rate on CLECs that purchase a basic Port that is used to provide access services to PSPs, where the rate to be imposed is neither cost-based, nor based on the Total Element Long Run Incremental Cost ("TELRIC") of providing the element. Ameritech's TELRIC-based rate for a basic port used by CLECs to provide UNE-P services is $2.18 per month. *ICC 00-0700 Order*. For this rate, CLECs have a right to access all features and functionalities of the switch.[8] Section 3(29) of the Communications Act defines the term "network element" to mean both "a facility or equipment used in the provision of a telecommunications service" and all "features, functions, and capabilities that are provided by means of such facility or equipment." Such features, functions, and capabilities include "subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing or other provision of a

[8] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 96-394 (rel. Sept. 27, 1996), ¶ 5 ("*First Report and Order*."),

telecommunications service." 47 U.S.C. § 3(29). The FCC has held that the "features" of a switch include all software functions that are embedded in the switching facilities of the local exchange carrier:

> We agree with MCI and MFS that the definition of the term network element includes physical facilities, such as a loop, switch, or other node, as well as logical features, functions, ***and capabilities that are provided by, for example, software located in a physical facility such as a switch.*** We further agree with MCI that the embedded features and functions within a network element are part of the characteristics of that element and may not be removed from it. ***Accordingly, incumbent LECs must provide network elements along with all of their features and functions, so that new entrants may offer services that compete with those offered by incumbents as well as new services.***

First Report and Order, ¶ 260.

Illinois law has also made clear since 1996 that Ameritech has an obligation to provide CLECs with access to all features, functions and capabilities of a switch on an unbundled basis, that is still capable of being combined in a platform offering.[9] In the LDDS Petition, the Commission held that Ameritech was required to provide UNE-P services with shared transport in a manner that made available to CLECs all features and functionalities of the switch. This mandate was reaffirmed in 2001 when the Illinois legislature adopted Section 13-801, which also requires Ameritech to "provide to any requesting telecommunications carrier, for the provision of an existing or a new telecommunications service, nondiscriminatory access to network elements on any unbundled or bundled basis, as requested, at any technically feasible point on just, reasonable, and nondiscriminatory rates, terms, and conditions." 220 ILCS § 5/13-801(d).

Network elements, including all the features and functionalities of the switch, are required to be made available to CLECs at TELRIC-based rates. The TELRIC of an element is "the forward-looking cost over the long run of the total quantity of the facilities and functions

[9] *In the Matter of the Petition of LDDS Communications Petition for a total wholesale network service tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company pursuant to Section 13-505.5 of the Illinois Public Utilities Act*, ICC Docket No. 95-0531 (June 26, 1996), p. 60.

that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements." 47 C.F.R. §51.505(b).

A. Ameritech's existing TELRIC Rate of $2.18 Includes The TELRIC Cost Incurred in Purchasing Software Bundles for the Features of the Switch.

Ameritech's proposed tariff to charge an additional $1.06 to recover the licensing cost Ameritech allegedly incurred in making Flex ANI function for UNE-P lines, would violate the requirements that Ameritech make all switch features and functions available at rates that are set according to the Total Element Long Run Incremental Cost of the Element. In ICC Docket No. 00-0700, the Illinois Commerce Commission held that a rate of $2.18 would fully recover the cost of the switching functions necessary to provide UNE-P, with shared transport, over the total demand output of the element. *ICC 00-0700 Order*, ¶ 76.

Ameritech's existing rate of $2.18 was established based on Ameritech's cost studies in ICC Docket No. 00-0700 that included a cost component for the licensing fees associated with switch features. Tr. 62. In ICC Docket No. 00-0700, Ameritech's cost studies included a cost component for a "bundle of features purchased from Lucent" that included such features as call waiting, caller ID, and multi-ring service. *Id.*; PC Cross Ex. 5. All CLECs that purchase a basic switch port would pay the same price ($2.18) regardless of whether the CLEC uses the switch features. Ameritech's theory on why that is appropriate under TELRIC principles, is that "these features are made available to everyone, including payphones." Tr. 68-69. However, Ameritech deemed this appropriate, because it was attempting to recover the cost of making the typical bundle of features available to CLECs. The Payphone Coalition CLECs do not need the features of the switch that are used to provide Call waiting, three way calling, caller ID, or other features made available by Ameritech on a UNE-P port. (Starkey Direct, Ex. 1.0, p. 17; PC Cross Ex. 5,

p. 2.) It would violate the principles of TELRIC-based pricing for the Payphone Coalition CLECs to pay for the cost of the "average bundle" of switch features, even though they don't use these features, and then pay an additional rate for a single switch features they do use. (Starkey Direct, Ex. 1.0, p. 16.)

Ameritech has not completed a TELRIC cost study for the UNE-P port to be used by CLECs to provide services to PSPs, and the Commission should deny Ameritech's request for an additional rate element for the nonrecurring cost of the secure features. However, if the Commission permits Ameritech to recover the full cost of the secure features at issue, the Commission should further order Ameritech to provide a complete TELRIC cost study to support a UNE-P line to be used by CLECs serving PSPs, with only those software features used by these CLECs.

B. The Bona Fide Request Process Is Not Applicable Where Ameritech Has Previously Been Ordered to Make All Features and Functions Available to a CLEC on a UNE-P Basis with Shared Transport.

Ameritech claims in its brief that if it has not recovered the cost for a secure feature to provide UNE-P, it may do so through a Bona Fide Request. (Ameritech Br. p. 13.) First, Ameritech's argument overlooks the fact that the Commission has compelled Ameritech to provide shared transport since at least 1996 (and even since at least 1999 when the Commission ordered AIN based shared transport in the *Ameritech/SBC Merger Order*,) and the FCC has compelled Ameritech to provide shared transport since at least 1996. Since that time, the Commission has investigated Ameritech's shared transport for all but 4 months. Tr. 201. In addition, under the FCC's March 8, 1998 *Memorandum Opinion and Order*, Ameritech was fully aware that it was required to provide Flex ANI services on access lines made available to PSPs. Despite the long standing requirement to provide Flex ANI services on payphone access lines,

and the long standing requirement to provide UNE-P with shared transport, Ameritech now claims that it failed to recover one of the costs associated with this shared transport combination.

Ameritech cannot now be allowed to foist upon the Payphone Coalition CLECs costs that Ameritech failed to include in its cost studies in ICC Docket No. 00-0700.

Ameritech cites *Louisiana II*[10] for the theory that LECs are not required to provide Secure Feature Identifications (such as SFID 332 and SFID 528) to CLECs. However *Louisiana II*, and the actual language quoted by Ameritech supports the Payphone Coalition position. *Louisiana II* states that BellSouth was not required to "provide vertical features that are ***not*** loaded in the switch software, because this would require BellSouth to build a network of superior quality." *Id*. at ¶ 218. The distinction is that SFID 332 and SFID 528 ***were*** resident in the Lucent switches, and simply needed to be activated by the payment of a license fee. *Louisiana II* may allow Ameritech to require a Bona Fide Request for a new software feature, but it does not sanction the requirement of a Bona Fide Request for a software feature already resident in a switch.

In fact, in *Louisiana II,* the FCC confirmed that that Bell South did not satisfy the requirements of Section 251(c)(3) in providing unbundled network elements to CLECs because it did not provide to CLECs all "vertical features" of the switch. Indeed, BellSouth's failure to provide all the vertical features resident in the switch, was cause for the FCC to deny BellSouth authority to provide interLATA services under Section 271:

> Checklist Item 6 -- Unbundled Local Switching
> BellSouth does not satisfy the requirements of checklist item (vi). A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's

[10] *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region InterLATA Services in Louisiana*, CC Dkt. 98-121, 13 FCC Rcd. 20, ¶ 217 (Oct. 13, 1998) ("*Louisiana II*")

> operator services. We find that BellSouth does not satisfy the requirements of checklist item (vi), because BellSouth does not show that it provides all of the features, functions, and capabilities of the switch.
>
> * * *
>
> The features functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers. Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.

Louisiana II, ¶ ; ¶ 207.

> As noted in *Louisiana II*[11] local exchange carriers are:
>
> legally obligated to provide all vertical features "that the switch is capable of providing." Vertical features provide end-users with various services such as custom calling, call waiting, three-way calling, caller ID, and Centrex. According to BellSouth's interpretation of this rule, it is only legally obligated to make available vertical features that it currently offers to its retail customers. We disagree.
>
> Our rules require BellSouth to provide all vertical features loaded in the software of the switch, whether or not BellSouth offers it on a retail basis.

Louisiana II, ¶ 216-17. Ameritech has not complied with this requirement.

C. Ameritech's Proposed Rate Would Impose the Entire Cost of Making Flex ANI Available on Payphone Access Lines, Even Though the Service Would Be Available to Other CLECs.

Dr. Currie testified that one justification for charging CLECs the $2.18 rate that includes the typical bundle of software features is that these features are "available to the" CLECs, even if they don't use them in serving PSP customers. Tr. 69. However, Ameritech violates its own pricing principle, because while it acknowledges that SFID 332 and SFID 528 can be used to fix Flex ANI issues for other services (i.e. Outward Wide Area Telecommunication Service, with Flex ANI code 52, and Private Virtual Network Services, with Flex ANI Code 93), Ameritech

[11] *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region InterLATA Services in Louisiana*, CC Dkt. 98-121, 13 FCC Rcd. 20, ¶ 217 (Oct. 13, 1998) ("*Louisiana II*")

attempts to impose the entire cost of fixing defects in the provision of Flex ANI on CLECs that service PSP customers. (Tr. 151-152; PC Cross Ex. 1; PC Cross Ex. 3, p. 3.) Despite the fact that these software features will correct defects in the provision of Flex ANI, Ameritech has allocated the entire cost of the license fees to only those CLECs that provide access services to PSPs. Ameritech's effort to do this would be inconsistent with the TELRIC pricing rules in 47 C.F.R. § 51.505(b), and inconsistent with Ameritech's construction of the ICC's Order in Docket No. 00-0700. Tr. 69.

D. Ameritech's Proposed Rate Structure to Assess the Rate on Only CLECs Purchasing Ports For PSPs is Discriminatory.

Even assuming that Ameritech has established that it has incurred costs to make Flex ANI available to CLECs with Ports used to provide services to PSPs, Ameritech's proposed rate structure is discriminatory and unlawful. First, Section 13-801(d) requires that rates for network elements be nondiscriminatory, and Section 13-801(g) requires that rates be cost-based. Notwithstanding these provisions, Ameritech has proposed a rate that is both discriminatory and not-based based.

First, Ameritech's proposed rate structure of an additional $1.07 per month does not reflect the manner in which Ameritech claims it incurred the cost. According to Ameritech, it has incurred a one-time nonrecurring cost to purchase licenses to provide Flex ANI on Lucent 5ESS switches. Despite the fact that the costs have purportedly been incurred only to upgrade Lucent 5ESS switches, Ameritech's proposed rate structure would assess an additional rate element on all ports used to provide access services to PSPs. CLECs that provide service from a central office using a Nortel or Siemans port would also be required to pay the additional cost, even though no additional rate is associated with providing Flex ANI from those ports.

In addition, the cost of purchasing the licenses for the Secure Features is for CLECs using a basic port (not a Coin Line Port) to provide services to PSPs. There is no indication that SFID 332 or SFID 558 relate in any way to making Flex ANI work on Coin Line Ports. However, Ameritech's propose rate would be imposed on Coin Line ports that did not require any upgrades for Flex ANI.

Moreover, Ameritech has proposed no terminating period by which is would fully recover its costs. Ameritech's monthly recurring charge would allow it to recover the additional rate element long after all of its alleged nonrecurring costs have been incurred.

E. Ameritech Did Not Allocate the Cost of the Switch Features Across All Lines, Making the Resulting Rate in Violation of the Commission's Order in ICC Docket No. 00-0700.

The ICC held in ICC Docket No. 00-0700 that when Ameritech conducts a study to determine the switch costs for UNE-P with Shared Transport, it is required to consider the total quantity of lines in service. ICC Order 00-0700, ¶ 36. Dr. Currie's analysis failed to even allocate the cost of the secure feature to the number of access lines that rely upon Flex ANI, including the ports that Ameritech uses to provide its own services to PSPs. Dr. Currie analysis attempts to recover the full cost of making UNE-P available against only CLECs. (Starkey Direct, PC Ex. 1.0, p. 10.)

The Commission has held that when Ameritech identifies the cost of providing UNE-P with shared transport, that Ameritech is required to "consider the 'total quantity' of Ameritech's approximately 20 million lines in service, and not some arbitrary smaller increment.. . ." *ICC Order 00-0700*, ¶ 36. According to the Commission:

> the "T" in TELRIC stands for total demand output. As the FCC noted in the First Report and order, "The increment that forms the basis for a TELRIC study shall be the entire quantity of the network element provided."

ICC Order 00-0700, ¶ 76, *citing the First Report and Order*, ¶ 690.

Ameritech's purported cost study did not assume the approximately 20 million lines in service operating in Illinois. The Commission should reject completely, Ameritech's analysis.

II. LICENSES FOR SFID 332 AND SFID 528 WERE PURCHASED BY AMERITECH TO CORRECT DEFECTS IN THE MANNER THAT AMERITECH WAS MAKING FLEX ANI AVAILABLE TO PAY TELEPHONE PROVIDERS, AND MAY NOT BE RECOVERED FROM CLECS.

Ameritech has not proven that in fact licenses for SFID 332 and SFID 528 were purchased to provide Flex ANI services to CLECs. Therefore, Ameritech may not impose the additional licensing fees on the TELRIC-based rate for Unbundled Network Elements. In March 1998, the FCC ordered Ameritech to begin providing Flex ANI services to payphone service providers (PSPs) so that IXC's could identify calls that originate from pay telephones. Ameritech, and other local exchange carriers, were required to include 2 coding digits (70) in the data that is associated with a telephone call. This 70 identifier would allow an inter-exchange carrier ("IXC") to identify a call as originating from a pay telephone, and know that it is required to pay compensation to the PSP that operates that telephone.

To comply with the payphone compensation requirements, Ameritech was required to purchase several licensing fees from Lucent to activate software resident in the central office switches. The evidence makes clear that there were 4 software features that Ameritech should have purchased to provide Flex ANI services to payphones, yet Ameritech only purchased 2. Ameritech learned in late 2000 (prior to a request for UNE-P access services from either Data Net Systems or Payphone Services) that Flex ANI was not functioning on all calls types. On calls where an end user dialed a toll free 800 call, if the 800 database returns a telephone number to the originating Ameritech switch that is different than the dialed 800 number, the switch would convert the 70 identifier to "24", causing the payphone provider to not be compensated on

these telephone calls. (PC Cross Ex. 9, p.3.) Through testing in February 2001, Ameritech discovered that it had failed to purchased SFID 332 and SFID 528 to correct this problem.

Because Ameritech had already filed a federal tariff to recover $1.21 per month from its PSP customers to implement Flex ANI, Ameritech sought to recover the expense of purchasing SFID 332 and SFID 528 from CLECs, claiming it was a cost of making UNE-P available. Ameritech asserts in its brief that "Lucent did not introduce the secure features necessary to address the interaction of Flex ANI and the AIN triggers until July 2001, immediately before SBC Illinois purchased the features to support the development of the Unbundled Payphone Ports. . . ." Ameritech Br. p. 5-6. This basic premise of Ameritech's case is directly contradicted by Lucent and Ameritech documents which make clear that "SFID 332 was released as a Software Update . . . on March 30, 1999. SFID was released 2Q2000. . . ." (PC Cross Ex. 7, p. 5.) Both software features were released by Lucent, and made available to Ameritech prior to either Data Net or Payphone Services' ordering UNE-P access services in March, 2001.

To comply with the FCC's order requiring that local exchange carriers provide Flex ANI identifier 70 on all calls made from pay telephones, Lucent initially developed 2 Secure Feature Identification (SFID) software modules for its Lucent 5ESS switches, SFID 38 and SFID 142.:

> **SFID 38** is the Flex ANI base feature software. (PC Cross Ex. 11, p. 9, ¶ 2.)
>
> **SFID 142** allows Ameritech to assign ANI ii digits (i.e. 70 for PSP lines, 78 for Inter-LATA Restricted ANI pairs, 61 for cellular services, and 52 for Outward Wide Area Telecommunications Services or OUTWATS) based on a line's classification. (PC Cross Ex. 3, p. 3; PC Cross Ex. 9.) A carrier cannot activate SFID 142, without also activating SFID 38. (PC Cross Ex. 11, p. 9, ¶2.)

These two SFID had to be purchased by Ameritech to provide the 70 identifier on calls made from payphones. In addition, however, there are "Office Identification" (OFID) software

features resident in the switch that, according to Ameritech, are not specific to a particular product such as Flex ANI or Local Transport, and "generally support the entire switch." In order for Flex ANI to operate correctly, SFID 38, SFID 142, and **OFID 744** must be activated and set to "Y". (PC Cross Ex. 3, p. 9.) Ameritech makes no claim in this proceeding to recover the costs for SFID 38 or 142, presumably because the costs for these features were recovered from PSPs.

As of June 2000, long after Ameritech was to have implemented Flex ANI, SBC had identified that "Flex-ANI does not currently work with all call scenarios." (PC Cross Ex. 9, p.3.) According to Southwestern Bell Telephone documents,

> "if [a call made from a payphone] is InterLATA, the 800 database returns a [Carrier Identification Code] and the switch forwards the 800 number and the ANI/FANI ii payphone digits to the carrier. ***However, if the 800 database returns a telephone number rather than the dialed 800 number, the ANI ii digits field as digits "24" entered to identify the call as an 800 call. This means all payphone identification is lost from the call."***

(Id.; see also PC Cross Ex. 7, p. 5 "Currently, Tollfree calls translated to a POTS number are sent to the carrier with II digits of 24. . . .") Lucent was aware that there were defects in the translations, because on March 30, 1999 it released **SFID 332,** one of the features that is the subject of this case. (PC Cross Ex. 7, p. 5.) It then released **SFID 528** in the 2nd quarter, 2000. (Id.)

In February 2001, before Payphone Services or Data Net Systems had requested UNE-P ports to be made available to PSPs, Ameritech learned that in order to correct the defects in providing Flex ANI on calls made from payphones, OFID 744 **was *not*** activated. (PC Cross Ex. 8, p. 5, email dated February 23, 2001 from John Rosenberto to Carol Gruchala "re FlexANI problem.") In order to activate OFID 744, SFID 332 and SFID 528 also had to be activated in the switches. (PC Cross Ex. 8, p. 2.) SFID 528 (identified by Lucent as 99-CP-4847) corrects

this defect (when activated) by allowing a carrier like Ameritech to forward to an IXC the correct 70 ANI identifier even when the 800 database returns a telephone number other than the dialed 800 number. (PC Cross Ex. 3, p. 3, para. 2.1.) The reason that SFID 332 and SFID 528 were not activated in the switches is that these 2 features "were not funded" by Ameritech. *Id.*

Ameritech claims that SFID 332 and SFID 528 were developed by Ameritech only after Ameritech requested assistance in providing Flex ANI as part of a UNE-P combination:

> "Only when Ameritech Illinois approached LUCENT about development of the unbundled payphone port did LUCENT explain that new SFIDs must be developed by LUCENT to accommodate the new product. These new SFIDs were 332 and 528. . . LUCENT developed them specifically to address the problem in providing the unbundled payphone port offering."

(Novak Rebuttal, Am. Ex. 2.1, p. 5, line 117-120, 130-132.) This allegedly occurred after March 2001 when Payphone Services, Inc. and Data Net Systems, LLC approach Ameritech to request the UNE-P combination with Flex ANI. (Wardin Direct, Am Ex. 3.0, p. 8, Line 220.)

However, SFID 332 was actually released by Lucent on March 30, 1999, and SFID 528 was released in the 2nd quarter, 2000. (PC Ex. 8.) According to Lucent, SFID 528 was released because:

> "The FCC has mandated that all Service Providers provide 'per call' compensation for all 'toll free' calls originating from payphones. . . [SFID] meets FCC (Docket No. 96-128) mandate for Pay Phone Compensation."

(P. 5 of PC Ex. 8.)

It is clear from the evidence, despite the testimony of Mr. Novack, that Lucent developed SFID 332 and SFID 528 to correct defects in the original software that was developed to make Flex ANI available on calls that originate from payphones. Lucent developed these software patches in March 1999 and in the 2nd Quarter 2000 in order to activate OFID 744. Ameritech did not purchase these SFID to provide Flex ANI on UNE-P lines to Data Net or to Payphone

Services, but instead purchased the licenses for these fees to comply with the FCC's orders to make Flex ANI available on calls made from payphones.

Ameritech was having difficulties in transmitting Flex ANI digits from its own switches on calls made from pay telephone providers that it was serving, and was required to purchase SFID 332 and 528 to address those problems. Because Ameritech had already tariffed a rate of $1.21 to its PSP customers for all costs associated with providing Flex ANI, Ameritech has attempted to recover these additional costs from CLECs. The Commission must deny Ameritech's request. Ameritech may not recover from CLECs costs that are not incurred in the provision of unbundled network elements. 220 ILCS 13-801(g).

CONCLUSION

Wherefore, for each of the foregoing reasons, the Payphone Coalition respectfully requests that the Commission deny Ameritech's Petition, and require Ameritech to provide UNE-P with Flex ANI capabilities with shared transport at the same TELRIC-based rate as that established by the Commission in ICC Docket No. 00-0700.

Respectfully submitted,

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Dated: April 11, 2003

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